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## OPLA Notes, July 2001

Maine State Legislature

Office of Policy and Legal Analysis

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# OPLA~Notes

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July 2001

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for the Maine State Legislature*

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## Invasive Aquatic Plants and Nuisance Species Legislation

On June 19<sup>th</sup> of this year, the Legislature enacted emergency legislation establishing a statewide program to address the threats posed to Maine's inland waters by invasive aquatic plants and nuisance species, including Eurasian milfoil. The bill creating the program, LD 1812, was reported out of the Joint Standing Committee on Natural Resources pursuant to a joint order, following numerous public hearings on that bill and four other related bills.<sup>1</sup> Individually, the four other bills did not receive a favorable report out of the Committee, however many of their components were incorporated into the Committee's bill. LD 1812 was enacted as an emergency measure that took effect on June 20, 2001 and is now Public Law 2001, chapter 434.

The Legislature first addressed the issue of invasive aquatic plants during the 119<sup>th</sup> Legislature when it enacted legislation requiring the Department of Environmental Protection and the Department of Inland Fisheries and Wildlife to undertake a public education program on invasive aquatic plants and to report back to the Legislature on steps necessary to avoid or minimize the potential future impacts of those species.<sup>2</sup> That law also prohibited the transportation of aquatic plants on public roads, prohibited the sale of invasive aquatic plants and the pos-

## Newsletter Greetings

Welcome to this edition of OPLA~Notes. This edition includes an article on Maine's legislative efforts to address the issue of invasive aquatic plants, the recent U.S. Supreme Court decision on medical marijuana, and information on legislative studies that will be conducted during the interim between the 120<sup>th</sup> First Regular Session and Second Regular Session. In addition, the newsletter includes useful websites and a listing of recent OPLA publications.

<sup>1</sup> The four other bills pertaining to invasive aquatic plants introduced during the 1<sup>st</sup> Regular Session were LD 589, LD 650, LD 1155 and LD 1192.

<sup>2</sup> PL 1991, c. 722 (derived from LD 2581).

session, importation, cultivation, transportation or distribution of invasive aquatic plants in a manner that could cause the plant to get into inland waters. It also defined the following 11 species as “invasive aquatic plants”: 1) Eurasian water milfoil, *Myriophyllum spicatum*; 2) Variable-leaf water milfoil, *Myriophyllum heterophyllum*; 3) Parrot feather, *Myriophyllum aquaticum*; 4) Water chestnut, *Trapa natans*; 5) Hydrilla, *Hydrilla verticillata*; 6) Fanwort, *Cabomba caroliniana*; 7) Curly pondweed, *Potamogeton crispus*; 8) European naiad, *Najas minor*; 9) Brazilian elodea, *Egeria densa*; 10) Frogbit, *Hydrocharis morsus-ranae*; and 11) Yellow floating heart, *Nymphoides peltata*. (38 MRSA §410 N).

In January 2000, the Department of Environmental Protection and the Department of Inland Fisheries and Wildlife submitted its report on invasive aquatic plants to the Joint Standing Committee on Natural Resources and the Joint Standing Committee on Inland Fisheries and Wildlife.<sup>3</sup> The report found that the introduction of non-indigenous invasive plant and animal species to the United States has been escalating, with potential widespread destructive consequences including habitat disruption, loss of native plant and animal communities, loss of property values and reduced fishing and water recreation opportunities. The report also found that although some species of invasive aquatic plants have been identified in Maine, the situation in this state is not yet as serious as in most other states. At the present time, Maine, Montana and Wyoming are the only states without confirmed infestations of Eurasian milfoil, the most problematic of the invasive aquatic plants.

In its report to the Legislature earlier this year, the Department of Environmental Protection and the Department of Inland Fisheries and Wildlife identified transport by boats, motors and trailers as the primary human activities contributing to the infestation and dispersal of invasive aquatic plants in the state's inland waters. Other factors include improper disposal or containment of aquarium plants and animals, bait handling and ornamental gardening and waterfront landscape practices.

The newly enacted program to control invasive aquatic plants and nuisance species requires the Department of Environmental Protection and the Department of Inland Fisheries and Wildlife to conduct a program in 2001 that includes a substantial public education component com-

bined with at least 5,000 person hours spent inspecting boats, motors and trailers for invasive aquatic plants at selected boat launching facilities and at no fewer than 10 roadside locations at or near the state's borders. In 2002 and subsequent years, the actual level of on-site inspections will be determined by those departments in consultation with the Interagency Task Force on Invasive Aquatic Plants and Nuisance Species, also established in the law.

In addition to the education and inspection components of the program, the Department of Environmental Protection and the Department of Inland Fisheries and Wildlife are authorized to jointly issue emergency orders to restrict or prohibit the use of any watercraft on all or a portion of a water body that has a confirmed infestation of an invasive aquatic plant. Such orders must be for a specific period and may be issued only when the use of watercraft on that water body threatens to worsen or spread the infestation. If the infested water body is a public drinking water supply, public notification and opportunity for comment is required before taking any response action that proposes the use of a chemical control agent.

The new law also prohibits the operation of a motorboat or personal watercraft on inland waters after January 1, 2002 unless that motorboat or personal watercraft displays a lake and river protection sticker. The fee for the sticker is \$10 for a motorboat or personal watercraft registered in Maine and \$20 for motorboats and personal watercraft not registered in Maine. The sticker will be available statewide through all agents authorized by the Department of Inland Fisheries and Wildlife to register boats or sell hunting and fishing licenses. Revenues from the stickers are divided between the Department of Inland Fisheries and Wildlife and the Department of Environmental Protection and must be used for education, inspection and enforcement efforts related to the control of invasive aquatic plants and nuisance species, either directly or through grants to public or private entities. Forty percent of the revenues from the stickers are allocated to the Department of Inland Fisheries and Wildlife and 60% of the revenues are allocated to the Department of Environmental Protection.

Beginning on January 1, 2002 the penalty for having a motorboat or personal watercraft in Maine inland waters without a lake and river protection sticker may be a fine of not less than \$100 and not more than \$250 per violation. The penalty for placing a watercraft contaminated with an invasive aquatic plant in Maine inland waters or operating a watercraft in a quarantined area is a fine of not less than \$500 and not more than \$5,000 per violation.

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<sup>3</sup> Maine Department of Inland Fisheries and Wildlife and the Maine Department of Environmental Protection (January, 2001). Invasive Aquatic Species. Report to the Natural Resources and Fish and Wildlife Committees of the 120<sup>th</sup> Legislature.

The law also creates a 17-member Interagency Task Force on Invasive Aquatic Plants and Nuisance Species with responsibility for advising the Land and Water Resources Council on various actions to control invasive aquatic plants and nuisance species and to recommend a state plan to address those threats. The legislation directs the Task Force to work with representatives from federal, state and local agencies and private environmental and commercial interests to form a northeastern regional panel to establish priorities and coordinate activities to prevent the spread of invasive aquatic plants and nuisance species in the Northeast.

The law transfers from the Maine Rainy Day Fund to the Department of Environmental Protection and Department of Inland Fisheries and Wildlife a sufficient amount of money to fund program costs for the 2001 boating season, but requires that those departments reimburse the Maine Rainy Day Fund in full before the end of the 2001-02 fiscal year. Program costs for 2002 and subsequent years are funded entirely from revenues collected from the annual sale of lake and river protection stickers. Those revenues will fund two part-time biologists at the Department of Environmental Protection and six new warden positions at the Department of Inland Fisheries and Wildlife as well as providing approximately \$780,000 each year in All Other funds for public education and information and for program operating costs.

The law also directs the Department of Environmental Protection and the Department of Inland Fisheries and Wildlife to report to the Joint Standing Committee on Natural Resources and the Joint Standing Committee on Inland Fisheries and Wildlife no later than January 15, 2002, on the invasive aquatic plant education and inspection program conducted during the 2001 boating season and on plans for that program for 2002 and subsequent years. The law authorizes the Joint Standing Committee on Natural Resources to report out legislation on invasive aquatic plants and nuisance species to the Second Regular Session of the 120th Legislature.

If you have any questions about administrative aspects of this program or would like to obtain informational materials about invasive aquatic plants and nuisance species, you should contact the Commissioner's Office at the Department of Environmental Protection at 287-2812 or the Commissioner's Office at the Department of Inland Fisheries and Wildlife at 287-5202.

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## Did You Know?.....



The Official State of Maine fossil is the pertica quadrifaria. The pertica quadrifaria is the scientific name of a primitive plant that lived about 390,000,000 years ago. Its fossilized remains were discovered in 1968 in the rocks of the Trout Valley Formation in Baxter State Park near Mount Katahdin. The Pertica quadrifaria probably reached a maximum height of about six feet, making it the largest land plant at that time. Pertica is a Latin word meaning a "long pole or rod." Pertica quadrifaria was selected as the Maine State Fossil because it was first discovered in Maine and is such a rare fossil. Well-preserved remains of Pertica are found at only three other places in the world besides Maine.



Melville W. Fuller, a native of Maine, became the Chief Justice of the U.S. Supreme court in 1888.

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## Recent Legal Issues



### **U.S. Supreme Court Rules on Medical Marijuana: United States vs. Oakland Cannabis Buyers' Cooperative and Jeffrey Jones (Case No. 00-151)**

On May 14, 2001, the United States Supreme Court unanimously ruled against a "medical necessity" exception to federal prohibitions on manufacturing and distributing marijuana, as established by the Controlled Substances Act. The Controlled Substances Act states that "[e]xcept as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally...to manufacture, distribute, or dispense, a controlled substance." 21 U.S.C. §841 (a)(1). The court found that the only exception specified by Congress under the Act for marijuana, a Schedule I controlled substance, is for Gov-

ernment-approved research projects. 21 U.S.C. §823 (f). The Oakland Cannabis Buyer's Cooperative, while it has authority under California law, is now unable to distribute marijuana to patients claiming a medical need for the drug without facing federal prosecution.

The ruling ended a lengthy legal battle that was sparked 5 years ago by the California initiative entitled the *Compassionate Use Act of 1996*. With 56 percent of California voters supporting the initiative, California became the first state in the nation to legalize the use of marijuana for medical purposes. While federal law prohibits the use of marijuana for any purpose, the California law provides an exception from criminal penalties for seriously ill individuals who can demonstrate a medical need for the marijuana.

Under California law, in order for an individual to qualify for this exception, a physician must "determine that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief." *California Health and Safety Code Ann.*, §11362.5. Soon after, 8 other states followed suit, including Alaska, Arizona, Colorado, Hawaii, Maine, Nevada, Oregon, and Washington. All of the states provided a medical exception from criminal penalties for possession and distribution of marijuana.

Shortly after the California law was passed, many "medical cannabis dispensaries" were organized to facilitate the distribution of marijuana to qualified patients. The Oakland Cannabis Buyer's Cooperative (Co-op) is a non-profit dispensary, organized with a physician and nurses on staff to accommodate patients who submit to a screening interview and provide a physician's statement recommending that the patient receive marijuana for medical treatment. In January of 1998, the United States sued the Co-op in U.S. District Court, arguing that while the Co-op was not violating state law, the Co-op's actions were in direct violation of federal law as written under the Controlled Substances Act. The District Court granted an injunction prohibiting the Co-op from manufacturing and distributing marijuana, and the Co-op proceeded to violate the injunction by continuing its services for those patients whom they believed would suffer severely if they were unable to receive treatment. The District Court rejected the Co-op's argument that patients would be "at imminent harm" if the Co-op were to stop distributing the drug, and allowed the Co-op's premises to be seized.

The Court of Appeals for the 9<sup>th</sup> Circuit determined that medical necessity was in fact, a "legally cognizable defense." The Court of Appeals remanded the case back to the District Court with the instruction that the District Court reflect on "the criteria for a medical necessity exemption" and to take those conditions into account if the court were to modify the injunction. *190 F. 3d, at 1115*. The United States petitioned the Supreme Court for certiorari and it was granted on the grounds that the Court of Appeals' decision could seriously impact the Government's ability to "enforce the Nation's drug laws." *531 U.S. 1010 (2000)*.

The Supreme Court determined that while certain drugs are listed in the Controlled Substances Act as "hav[ing] a useful and legitimate medical purpose... necessary to maintain the health and general welfare of the American people," marijuana is not included as one of them. The Supreme Court stated the reading of the Act and the classification of marijuana as a Schedule 1 controlled substance supports the conclusion that "Congress has made a determination that marijuana has no medical benefits worthy of an exception."

The Co-op may continue the legal challenge on possible constitutional and commerce clause grounds that were not addressed in this Supreme Court ruling. In Maine, LD 611, *An Act to Create a Pilot Project to Fully Implement the Maine Medical Marijuana Act of 1998*, has been carried over to the 2<sup>nd</sup> Regular Session of the 120<sup>th</sup> Legislature.

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## 120<sup>th</sup> First Regular Session Bill Statistics

A total of 1831 bills were considered in the First Regular of the 120<sup>th</sup> Legislature. The table below summarizes statistical information about the bills.

	Number of Bills	Percent of Total
<b>Bills Introduced</b>	<b>1831</b>	<b>100%</b>
<b>Bills Enacted or Finally Passed</b>	<b>590</b>	<b>32.2%</b>
■ <b>Joint Study Orders</b>	<b>7</b>	<b>41.2%</b>
■ <b>Public Laws</b>	<b>471</b>	<b>25.7%</b>
■ <b>Private &amp; Special Laws</b>	<b>43</b>	<b>2.3%</b>
■ <b>Resolves</b>	<b>69</b>	<b>3.8%</b>
■ <b>Constitutional Resolutions</b>	<b>0</b>	<b>0%</b>
■ <b>Bills Vetoed or held</b>	<b>4</b>	<b>.2%</b>

by the Governor		
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## Committee Actions

	Number of Bills	Percent of Total
<b>Total bills referred to committees</b>	<b>1789</b>	<b>97.7%</b>
■ <b>Total bills reported out</b>	<b>1667</b>	<b>91.0%</b>
■ <b>Bills carried over</b>	<b>122</b>	<b>6.7%</b>
<b>Unanimous Committee Reports</b>	<b>1365</b>	<b>79.9%</b>
■ <b>Ought to Pass</b>	<b>110</b>	<b>6.4%</b>
■ <b>Ought to Pass as Amended</b>	<b>491</b>	<b>28.7%</b>
■ <b>Ought to Pass in New Draft</b>	<b>1</b>	<b>.1%</b>
■ <b>Ought Not to Pass</b>	<b>763</b>	<b>44.6%</b>
<b>Divided Reports</b>	<b>344</b>	<b>20.1%</b>
<b>Major Substantive Rules Reviewed</b>	<b>11</b>	<b>100%</b>
■ <b>Authorized Without Changes</b>	<b>7</b>	<b>63.6%</b>
■ <b>Authorized With Changes</b>	<b>4</b>	<b>36.4%</b>
■ <b>Not Authorized</b>	<b>0</b>	<b>0%</b>

## Internet Intersection

### Policy and Government



**Agency for Healthcare Research and Quality (AHRQ):** The Agency for Healthcare Research and Quality is located within the U.S. Department of Health and Human Services. The website offers health care information, research findings and data to help consumers, health providers, health insurers, researchers and policymakers gather information about health care issues.

[www.ahrq.gov](http://www.ahrq.gov)

**Instacase.com:** This website provides summaries of the latest court decisions from the U.S. Supreme Court and the intermediate appellate courts from each of the 50 states, as well as each of the U.S. Circuit Courts.

[www.instacase.com](http://www.instacase.com)

**Law and Legislative Reference Library:** Provides access to the URSUS catalog, collections information, reference

information, legislative history instructions and interlibrary loan information and lists of Justices for the Maine Supreme Judicial Court and Maine Attorney Generals. The Library's website also includes an in-house index to NCSL Legisbrief, a two-page issue brief published by the National Conference of State Legislatures (NCSL). The website also offers the submittal of research requests via e-mail and provides information of the library's move during renovations of the StateHouse.

[www.state.me.us/legis/lawlib](http://www.state.me.us/legis/lawlib)

### Technology



**Consumer's Guide to Search Engines:** This website offers information on search strategies, explains the difference between directories and search engines and contains links to various articles and tutorials on search engines.

[www.imaginarylandscape.com/helpweb/www/seek.html](http://www.imaginarylandscape.com/helpweb/www/seek.html)

### Reference



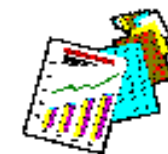
**Legal Information Institute: Supreme Court:** This website offers a collection of nearly all opinions issued by the U.S. Supreme Court since May of 1990, as well as a current court schedule, a gallery of justices, and a glossary.

<http://supct.law.cornell.edu/supct/>

**AheadNews.com:** This website offers links to various news sources, including polls, national news sites, audio/video clips, most popular websites of the week, and searches by newspaper or columnists and general searches by headline or keywords.

[www.researchville.com/](http://www.researchville.com/)

### General Interest



**Acadia National Park:** This website includes the natural and cultural history of Acadia National Park, general information on activities and regulations, photos, and related links.

<http://www.acadia.net/anp/>

**Yosemite Pictures.Com:** The website offers pictures of the scenery of Yosemite National Park. Picture categories include seasonal pictures, waterfalls, redwoods, lakes and new



pictures. The site also includes links to other resources about the park. .

[www.yosemitepictures.com](http://www.yosemitepictures.com)

### Legislative Studies During the Interim

The following is a listing of legislative studies that were authorized to be conducted during the interim between the 120<sup>th</sup> Legislature First Regular Session and Second Regular Session. For more information on a particular study, please contact OPLA at 287-1670 or OFPR at 287-1635.

Study Name	Reporting Date
Blue Ribbon Commission on Post-secondary Educational Attainment	December 5, 2001
Commission to Recognize Veterans of the Vietnam War in the State House Hall of Flags (continuation)	December 1, 2001
Commission to Review the Child Protective System	December 5, 2001
Committee to Study Access to Public and Private Lands	December 5, 2001
Commission to Study Assisted Living	December 5, 2001
Commission to Study the Benefits and Costs for Increasing Access to Family and Medical Leave for Maine Families	December 5, 2001
Commission to Study Domestic Violence (continuation)	December 5, 2001
Commission to Study Equity in the Distribution of Gas Tax Revenues Attributable to Snowmobiles, All-terrain Vehicles and Watercraft	December 5, 2001
Commission to Study the Implementation of a Unified Emergency Response for Emergency Releases and Spills of Toxic or Hazardous Materials	December 5, 2001
Health Care System and Health Security Board	March 1, 2002
Commission to Study Issues Concerning Changes to Traditional Uses of Maine Forests and Lands	November 1, 2001

Study Name	Reporting Date
Commission to Study the Needs of Persons with Mental Illness Who Are Incarcerated	December 14, 2001
Commission to Study Needs and Opportunities Associated with the Production of Salmonid Sport Fish in Maine	January 15, 2002
Commission to Study Reimbursement Rates for Maine's Bottle Redemption Businesses and Other Issues Related to the Handling and Collection of Returnable Containers	December 1, 2001
Committee Study to Review Transition to a New School Funding Formula Based on the Essential Programs and Services	December 31, 2001
MOJUSTIS Board (continuation)	December 15, 2001, and December 15, 2002
Legislative Youth Advisory Council	February 15, 2002
Committee to Study the Loss of Commercial Fishing, Waterfront Access and Other Economic Development Issues Affecting Commercial Fishing	December 5, 2001
Round Table to Study Economic and Labor Issues Relating to the Forest Products Industry (continuation)	December 5, 2001
Commission to Develop a Plan to Implement the Closure of State Liquor Stores	January 31, 2002
Recodification of Title 12, Inland Fisheries and Wildlife Laws (staff study)	January 15, 2002
Committee to Study Growth Management	December 5, 2001
Maine Millennium Commission on Hunger and Food Security (continuation)	December 5, 2001
Commission to Study the Establishment of an Environmental Leadership Program (continuation)	December 1, 2001
Joint Review of Tax Expenditure Review Process	October 1, 2001
Education Funding Reform Committee	December 31, 2001
Youth in Need of Services Oversight Committee	N/A
Advisory Committee to the Department of Administrative and	December 15, 2001



Study Name	Reporting Date
Financial Services Regarding the Worker's Compensation System	

Editor: Darlene Shores Lynch, Senior Legislative Researcher

Article Contributors: Patrick Norton, Principal Analyst and Natalie Hicks, Legislative Researcher

We welcome your comments and suggestions.

Contact the Office of Policy and Legal Analysis by writing to 13 State House Station, Augusta, Maine 04333; calling 287-1670; or stopping by Room 215 of the Cross Office Building. The newsletter is available on the Internet at: [www.state.me.us/legis/opla/newslet.htm](http://www.state.me.us/legis/opla/newslet.htm)



## OPLA Publications

- **Enacted Law Digest:** A brief summary of all public laws, private and special laws, resolves and certain joint orders enacted or passed by the 120<sup>th</sup> Legislature, First Regular Session. The summary of each enacted or passed legislative document includes the chapter number, title, LD number or House and Senate Paper number, a summary of the enacted bill, resolve or order and the effective date of any emergency legislation. The digest is produced in conjunction with the Office of Fiscal and Program Review.
- **Study Reports** - A list of study reports of legislative committees and commissions from 1973 on is available from OPLA. Many of the recent legislative studies staffed by OPLA are available on the OPLA website at the following address:  
<http://www.state.me.us/legis/opla/reports2.htm>

## A Word About OPLA

The Office of Policy and Legal Analysis (OPLA) is one of several nonpartisan offices of the Maine State Legislature. It operates under the auspices of the Legislative Council. The office provides professional staff assistance to the joint standing and select committees and study commissions, including providing policy and legal research and analysis, coordinating the committee process, drafting bills and amendments, analyzing budget bills in cooperation with the Office of Fiscal and Program Review and preparing legislative proposals, reports and recommendations.

### OPLA~Notes

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